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Before the
Federal Communications Commission
Washington, D.C. 20554

FEB 16 2005

In the Matter of	)	
	)	WT Docket No. 05-62
Amendment of Part 90 of the Commission's Rules to Provide for Flexible Use of the 896-901 MHz and 935-940 MHz Bands Allotted to the Business and Industrial Land Transportation Pool	)	
Oppositions and Petitions for Reconsideration of 900 MHz Band Freeze Notice	)	DA 04-3013

NOTICE OF PROPOSED RULEMAKING AND MEMORANDUM OPINION AND ORDER

Adopted: February 10, 2005 **Released: February 16, 2005**

Comment Date: [30 days after publication in the Federal Register]
Reply Comment Date: [45 days after publication in the Federal Register]

By the Commission:

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I. INTRODUCTION

1. By this Notice of Proposed Rulemaking (*Notice*), we propose amendments to Part 90 of the Commission's Rules to facilitate more flexible use of the 199 channels allocated to the Business and Industrial Land Transportation (B/ILT) Pools in the 896-901/935-940 MHz (900 MHz) bands.[1] We propose to permit any use of the B/ILT channels in the 900 MHz band that is consistent with the band's fixed and mobile allocations.[2] We also propose to license the remaining spectrum using a geographic area licensing scheme. Accordingly, we propose service rules, including licensing, technical and operational rules for the new geographic licensees, and seek comment on defining the rights of B/ILT licensees already operating in the 900 MHz band. We also seek comment on competitive bidding rules and procedures to be used in the event that mutually exclusive applications are filed for the 900 MHz proposed geographic licenses. We believe that our new proposed framework for flexible spectrum access in this band will facilitate the provision of telecommunications services to consumers by eliminating

[1] 47 C.F.R. § 90.617(b), Table 2B – Industrial/Land Transportation Category 896-901/935-940 MHz Band Channels (99 Channels); § 90.617(c), Table 3B – Business Category 896-901/935-940 MHz Band Channels (100 Channels) (2003).

[2] 47 C.F.R. § 2.106.

unnecessary regulatory restrictions, and thereby provide greater flexibility in deploying the spectrum to respond to evolving market demands.[3]

2. Finally, concurrently with this *Notice*, we address the petitions for reconsideration, informal letter requests, and informal opposition filed in response to the freeze placed on new applications for 900 MHz licenses on September 17, 2004.[4]

3. We believe the proposed rules will serve our goals of providing service to the public consistently and expeditiously, and allowing the marketplace to respond to consumer demands. Moreover, we believe that allowing for flexible use of this spectrum will greatly aid in facilitating band reconfiguration occurring at 800 MHz.[5] In particular, the policies and rules adopted in the *800 MHz R&O* changed the nature of the 900 MHz spectrum by providing additional flexibility in the 900 MHz private land mobile radio (PLMR) service by permitting licensees the rights to initiate commercial mobile radio service (CMRS) operations on their currently authorized spectrum or to assign their authorizations to others for CMRS use.[6] As discussed in more detail below, continuing to allow the current site-based licensing approach in this band would be inefficient, resulting in increased transaction costs, and would ultimately hinder rather than facilitate rebanding efforts in the 800 MHz band.

4. We believe that this *Notice*, and the proposed shift in licensing paradigm, is vital to ensuring the success of band reconfiguration in the 800 MHz band while providing opportunities for incumbents to continue to pursue their business plans. We expect that the rules and policies proposed herein will encourage the most efficient use of the spectrum, promote the rapid deployment of facilities and services, and support secondary market transactions (including spectrum leasing). We also believe that our actions strike a fair and equitable balance between the interests of incumbent B/ILT licensees, and those seeking to provide geographic area service.

II. BACKGROUND

5. In 1986, based on its favorable experience gained with the pool structure used in the 800 MHz band, the Commission established a pool structure for the 900 MHz PLMR spectrum and allocated 10 MHz of spectrum in the 896-901 and 935-940 bands into different pools: 5 MHz (200 channels) for the Specialized Mobile Radio (SMR) Pool, 2.5 MHz for the Industrial/Land Transportation (99 channels) and 2.5 MHz for the Business Pool (100 channels).[7]

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[3] Further, the Commission's Spectrum Policy Task Force Report points to increased flexibility in the use of spectrum as an important means of promoting greater technical, economic, and marketplace efficiency. *See* FCC Staff Report, *Spectrum Policy Task Force Report,* ET Dkt No 02-135 at 3 (rel. Nov. 2002).

[4] *See* "Wireless Telecommunications Bureau Freezes Applications in the 900 MHz Band," *Public Notice*, 19 FCC Rcd 18,277 (2004) (*Freeze Public Notice*); *see also* section V. *infra.*

[5] *See* Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *Report and Order*, 19 FCC Rcd 14,969 (2004) (*800 MHz R&O*).

[6] *See 800 MHz R&O*, 19 FCC Rcd at 15,127-28 ¶¶ 335-337. In doing so, the Commission declined to impose a holding period requirement. *See id.*

[7] *See* Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems Amendment of Parts 2, 15, and 90 of the Commission's Rules and Regulations to Allocate Frequencies in the 900 MHz Reserve Band for Private Land Mobile Use Amendment of Parts 2, 22 and 25 of the Commission's Rules to Allocate Spectrum for, and to Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services, GEN Docket No. 84-1231 RM-4812, GEN Docket No. 84-1233 RM-4829, GEN Docket No. 84-1234 RM-4247, *Report and Order*, 2 FCC

(continued....)

6. The SMR Pool was established to accommodate the growing demand for private land mobile spectrum for SMR systems and to alleviate congestion in the 800 MHz SMR band.[8] In 1993, Congress amended the Communications Act of 1934 to reclassify most SMR licensees as CMRS providers, and soon thereafter, the Commission proceeded to create service rules and auction rules for 900 MHz SMR licenses as geographic overlays to the incumbent SMR licensees.[9] In 1996, after a two-phase licensing process, the Commission completed its auction of 900 MHz SMR licenses in twenty ten-channel blocks using Major Trading Areas (MTAs) as service areas.[10]

7. The B/ILT Pools were established for use by site-by-site licensees engaged in commercial activities, the operation of educational, philanthropic, or ecclesiastical institutions, clergy activities, or the operation of hospitals, clinics, or medical associations.[11] In addition, eligibility was also provided for any corporations furnishing nonprofit radio communication service to its parent corporation or subsidiary.[12] Currently, applications for use of the B/ILT frequencies are limited to private, internal use systems, and thus SMR systems and other non-eligible users, are not authorized applicants on these channels.[13]

8. On July 8, 2004, the Commission adopted significant technical and procedural measures designed to address the problem of interference to public safety communications in the 800 MHz band.[14] As part of its reconfiguration plan at 800 MHz, the Commission consolidated the B/ILT Pools in the 800 MHz and 900 MHz bands, allowing any eligible B/ILT licensee to be licensed on the consolidated channels.[15] In doing so, the Commission indicated that consolidation of the B/ILT Pools would increase operational flexibility and spectrum efficiency, while rendering moot inter-category sharing and

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Rcd 1825, 1830-31 ¶¶ 45-46, 50 (1986) (*Allocation R&O*). The Commission also adopted "inter-pool" sharing to permit sharing of frequencies by those entities eligible in other service pools. *Id.* at 1831 ¶¶ 51-52.

[8] *Allocation R&O*, 2 FCC Rcd at 1830-31 ¶¶ 41, 46, 50.

[9] *See* Omnibus Reconciliation Act of 1993, Pub.L. No. 103-66, (Budget Act), § 6002(b), 107 Stat. 312, 392 (1993) (codified at 47 U.S.C. § 332).

[10] *See* "FCC Announces Grant of 900 MHz Specialized Mobile Radio MTA Licenses," *Public Notice*, 12 FCC Rcd 13,055 (1996); Implementation of Sections 3(n) and 332 of the Communications Act – Regulatory Treatment of Mobile Services, *Second Report and Order*, 9 FCC Rcd 1411 (1994) (*CMRS Second R&O*); *CMRS Third Report and* Order, 9 FCC Rcd 7988 (1994) (*CMRS Third R&O*). *See also* Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89-553, *Second Report and Order and Second Further Notice of Proposed Rule Making*, 10 FCC Rcd 6884 (1995) (*SMR Second R&O*) (adopting final service rules); Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89-553, *Second Order on Reconsideration and Seventh Report and Order*, 11 FCC Rcd 2639 (1995) (*SMR Final R&O*) (adopting final auction procedure rules).

[11] 47 C.F.R. §§ 90.31, 90.35.

[12] 47 C.F.R. § 90.33.

[13] Applications for frequencies in the B/ILT Category 900 MHz Band Pools are coordinated by frequency coordinators certified in the B/ILT Pools. *See* 47 C.F.R. § 90.35. As previously noted, the Commission recently provided that 900 MHz PLMR licensees may convert to CMRS use, or assign their authorizations to others for such use. *See 800 MHz R&O*, 19 FCC Rcd at 15,127-28 ¶ 337.

[14] *See 800 MHz R&O.*

[15] *800 MHz R&O*, 19 FCC Rcd at 15,126 ¶ 334.

associated resource burdens.[16] The Commission also provided for additional flexibility in the 900 MHz band by allowing 900 MHz PLMR licensees to initiate CMRS operations on their currently authorized spectrum or to assign their authorizations to others for CMRS use.[17] The Commission reasoned that since it permitted CMRS use of PLMR frequencies in the 800 MHz land mobile band, similar rules should apply in the 900 MHz land mobile spectrum, in the interest of regulatory symmetry.[18] The Commission also noted that in order to provide the "green space" necessary to effect reconfiguration of the 800 MHz band, some operations may need to shift from the 800 MHz to 900 MHz band -- a factor that further merited complementary CMRS rules in both bands.

9. On September 17, 2004, shortly after release of its *800 MHz R&O*, the Commission received an unusually large number of applications for new 900 MHz licenses in the B/ILT category. Concerned that so many new authorizations might compromise the use of the 900 MHz band for facilitating band reconfiguration at 800 MHz, the Wireless Telecommunications Bureau (Bureau) released a Public Notice freezing applications for new 900 MHz licenses, commencing September 17, 2004.[19] Accordingly, the Bureau is no longer accepting applications for new 900 MHz licenses as of the release date of the Public Notice and until further notice.

III. STATE OF THE INDUSTRY

10. According to the Commission's Universal Licensing System (ULS) database, there are 1,774 licensees at 10,059 discrete sites in the 900 MHz B/ILT Pool. While the service is used throughout the country, we note that the greatest number of stations appear to be clustered along the coastal Northeast (Pennsylvania through Massachusetts), the Carolinas, Florida, the Great Lakes region (Wisconsin through Michigan), and the Gulf Coast area (Louisiana through the Texas coast). We also see a large demand for the areas of central Texas north to Kansas (including Oklahoma), coastal Washington State, and northern and southern California, both coast and inland. There is less demand for this spectrum in all other parts of the American West and upper Midwest, the Mississippi Valley, and the inland Northeast (Maine through the Virginias). Demand is greatest in more populated counties, with 8,341 unique sites, while rural counties have 1,579 such sites.[20] While the number of new applications for the 896-901/935-940 MHz Industrial/Land Transportation (conventional and trunked) and Business (conventional) services has generally remained static over the past four years, the number of new applications for the Business

[16] *800 MHz R&O*, 19 FCC Rcd at 15,126 ¶ 334.

[17] *800 MHz R&O*, 19 FCC Rcd at 15,127-28 ¶ 337; *but see,* Motion of the Land Mobile Communications Council (LMCC) for Partial Stay, WT Docket No. 02-55 *et al.*, filed Jan. 12, 2005 (asking that the Commission stay the effective date of its rule allowing 900 MHz B/ILT licensees to convert to CMRS operations). LMCC limited its request to applications that were filed after release of the *800 MHz R&O* and before the 900 MHz freeze, believing that those applications were speculative, and that the application filer, ACI 900, Inc., was engaged in spectrum trafficking. The Public Safety and Critical Infrastructure Division, WTB, denied LMCC's request. *See* In the Matter of Improving Public Safety Communications in the 800 MHz Band, *et seq.*, WT Docket 02-55 *et seq., Order*, DA 05-166 (rel. Jan. 25, 2005).

[18] *800 MHz R&O*, 19 FCC Rcd at 15,127 ¶ 335. In 2000, the Commission amended its rules to permit CMRS use of B/ILT frequencies in the 800 MHz land mobile band and allowed B/ILT licensees to transfer their licenses to CMRS entities. *See* Implementation of Sections 309(j) and 337 of the Communications Act of 1934, As Amended, WT Docket No. 99-87, *Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 22,709, 22,761 ¶¶ 110-11 (2000).

[19] *See Freeze Public Notice* at 1.

[20] Further, there are 2,345 rural counties (*i.e.*, less than 100 persons per square mile), of which 545 (or 23%) have a B/ILT site, while 452 of the 796 non-rural counties (or 56%) have a B/ILT site.

(trunked) service has increased significantly in 2004; from 37 new applications in 2000, to 263 in 2001, 215 in 2002, 143 in 2003, and 613 through mid-September 2004. The areas of greatest demand for Business (trunked) services through September 2004 (*i.e.*, when the Bureau's freeze took effect) are Colorado, with 233 new applications, followed by California with 61, Texas with 47, Florida with 42, and Georgia with 37.

IV. DISCUSSION

A. General Provisions

11. As we have recently done with other spectrum re-allocated or re-designated for licensed fixed and mobile services, we propose to give new licensees for these 900 MHz channels the flexibility to provide any fixed or mobile service that is consistent with the allocations for this spectrum. We also propose to license this spectrum under our Part 90 Private Land Mobile Radio Services rules, employing a geographic area licensing scheme.

1. Flexible Use

12. We propose service rules for the new 900 MHz channels that would provide licensees with the flexibility to employ this spectrum for any use permitted by the United States Table of Frequency Allocations contained in Part 2 of our rules (*i.e.*, fixed or mobile services). Furthermore, Congress has recognized the potential benefits of flexibility in allocations of the electromagnetic spectrum and amended the Communications Act in 1999 to give the Commission the authority to provide for flexibility of use pursuant to section 303(y) if: "(1) such use is consistent with international agreements to which the United States is a party; and (2) the Commission finds, after notice and an opportunity for public comment, that (A) such an allocation would be in the public interest; (B) such use would not deter investment in communications services and systems, or technology development; and (C) such use would not result in harmful interference among users."[21]

13. Our proposal for flexibility fully meets the section 303(y) criteria listed above. First, such use would be consistent with applicable international agreements. In addition, the public interest benefits of flexibility are manifold. The Commission has identified the establishment of maximum feasible flexibility in both spectrum designations and allocations and service rules as a critical means of ensuring that spectrum is put to its most beneficial use. We would expect the economic efficiencies of flexibility to foster, not deter, technology development and investment in communications services and systems. Further, the technical rules we are proposing herein would prevent harmful interference among users.

14. Accordingly, we seek comment on our tentative conclusion to provide for flexible use of the remaining 900 MHz white space (*i.e.*, the geographic areas not served by the existing B/ILT licenses), especially in light of the section 303(y) criteria noted above. For those commenters that believe restrictions are warranted, we ask that they detail what restrictions are needed and why.[22] We also ask

[21] 47 U.S.C. § 303(y).

[22] *See, e.g.*, Letter from Jill M. Lyon, Vice President & General Counsel, United Telecom Council, and Mark E. Crosby, President & Chief Executive Officer, Industrial Telecommunications Association, Inc., to John Muleta, Chief, Wireless Bureau (filed Dec. 27, 2004) (asking the Commission consider the impact of an auction of 900 MHz B/ILT white space on critical infrastructure entities, and suggesting that the marketplace values alternatives to commercial service, as evidenced by the small number of 800 MHz private mobile radio service licensees that have converted their authorizations to CMRS).

commenters to consider whether there are trade-offs between flexibility and investment in technology, and restrictions on spectrum use. To the extent commenters may believe flexible use is not appropriate for this band, we ask that they provide specific suggestions on how spectrum should be used by a licensee, and provide appropriate analysis. We also seek comment on whether certain authorizations may pose a greater risk of interference to other uses planned by parties interested in deploying in this spectrum.

2. Regulatory Framework

15. While we propose to permit flexible use of the remaining 900 MHz white space, we tentatively conclude that we will continue to license these bands under the framework of Part 90 of our rules. Part 90 prescribes a comprehensive set of licensing and operating rules for the spectrum for which it applies. Regulations governing the licensing and use of frequencies in the 896-901 and 935-940 MHz bands are set forth in Part 90, Subpart S.[23] We seek comment on our proposal to adopt these flexible use policies for these 900 MHz channels regulated under Part 90. As set forth in more detail below, we also seek comment on what additional and modified rule provisions should be included in Part 90 or incorporated by reference, consistent with flexible use spectrum management principles. We believe it appropriate, in the interest of consistency and symmetry within the 900 MHz band, to apply Part 90 rules to licensing these channels in the 900 MHz band, and to continue to apply Part 90 to incumbents also operating in this band. Nevertheless, we seek comment on whether these bands should be governed by an alternative regulatory framework.

3. Assignment of Licenses

16. Section 309(j) of the Communications Act requires that the Commission assign initial licenses through the use of competitive bidding when mutually exclusive applications for such licenses are accepted for filing, except in the case of certain specific statutory exemptions not applicable here.[24] In this *Notice*, we tentatively conclude that we should adopt a geographic area licensing scheme for the 900 MHz spectrum because this is consistent with flexible use spectrum management principles. Should we find that it would serve the public interest to implement a geographic licensing scheme under which mutually exclusive applications are possible, then, consistent with section 309(j), we must resolve such applications for initial licenses through competitive bidding.[25] We propose competitive bidding procedures *infra* at section IV.D.

B. Band Plan

1. Geographic Area Licensing

17. We tentatively conclude that we should license this 900 MHz spectrum using a geographic area licensing scheme, and we seek comment on this tentative conclusion. As opposed to a station-defined site-by-site licensing approach, we believe that a geographic area licensing scheme is

[23] 47 C.F.R. §§ 90.601-699.

[24] 47 U.S.C. §§ 309(j)(1)-(2).

[25] *See* Implementation of Section 309(j) and 337 of the Communications Act of 1934, As Amended, WT Docket No. 99-87, *Report and Order and Further Notice of Proposed RuleMaking*, 15 FCC Rcd 22,709 (2000) (*BBA Report and Order*); *see also* Implementation of Section 309(j) of the Communications Act - - Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348, ¶¶ 59-66 (1994) (*Competitive Bidding Second Report and Order*), *recon. Second Memorandum Opinion and Order*, 9 FCC Rcd 7245 (1994) (determining to use competitive bidding to choose among mutually exclusive initial applications in the CMRS services).

better suited for the types of fixed and mobile services that will likely develop in this overlay band.

18. It has been our experience that geographic area licensing offers many advantages over site-by-site licensing.[26] Geographic area licensing will maximize flexibility and permit new and innovative technologies to rapidly develop in these bands. Geographic area or wide-area licensing also allows a licensee substantial flexibility to respond to market demand, which results in significant improvements in spectrum utilization. In particular, geographic area licensing permits economies of scale because it allows a licensee to coordinate usage across an entire geographic area to maximize the use of spectrum. It also reduces regulatory burdens and transaction costs, because wide-area licensing does not require site-by-site approval and a licensee can aggregate its service territories without incurring the administrative costs and delays associated with site-by-site licensing. This approach is especially advantageous where spectrum is likely to be used for services that require ubiquity and mobility over wide areas. As a result, licensees can more rapidly roll out their services, as was the Commission's experience with Personal Communications Services (PCS). We note that this licensing scheme is consistent with the licensing approach adopted for the 900 MHz SMR service.[27] As with the 900 MHz SMR service bands, this spectrum is suitable for all manner of CMRS. Finally, we believe that geographic area licensing would enable the most efficient use of the licensed spectrum, and would be suitable for policies that facilitate the availability of spectrum for a wide variety of users and uses through secondary market mechanisms, including partitioning, disaggregation, and spectrum leasing.

19. For those that do not support geographic licensing for the flexible-use spectrum, we invite commenters to explain any opposition and the costs and benefits associated with any preferable licensing proposal.

20. *Partitioned Licenses and disaggregated spectrum.* We tentatively conclude that we should permit partitioning and disaggregation, subject to the rules we have proposed for each.[28] We seek comment on this proposal. Commenters should address any conflicts in the partitioning and disaggregation rules and whether any modifications regarding eligibility, technical standards or other requirements are necessary.

2. Size of Geographic Service Areas

21. Assuming that we utilize a geographic area approach for licensing the flexible-use spectrum, we must determine the appropriate size of service areas on which licenses should be based. Traditionally, in establishing a service, the Commission attempts to adopt optimal geographic area size(s) and optimal spectrum block size(s), taking into consideration that parties may aggregate licenses through the auction process and may also adjust their service areas through secondary market mechanisms such as partitioning, disaggregation, and spectrum leasing, if such modifications are necessary.

22. We note that the Commission utilized MTAs as the service area for 900 MHz SMR

[26] *See, e.g.*, Amendment of Part 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *et al.*; WT Docket Nos. 03-66, *et al., Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14,165 (2004).

[27] *CMRS Third R&O*, 9 FCC Rcd 7988, 8050-51 ¶ 113.

[28] *See* Appendix A.

licensing.[29] In doing so, the Commission concluded that such service area licensing "was more likely to create opportunities for both existing licensees and new entrants to meet customer demands for wide-area service."[30] We believe that using Major Economic Areas (MEAs) -- the rough equivalent of MTAs -- for 900 MHz spectrum may have similar positive effects.[31] We also note, however, that use of smaller geographic areas such as Basic Economic Areas (EAs)[32] may provide greater opportunities for small and medium-sized businesses to successfully compete against larger, well-financed bidders. Accordingly, we seek comment on whether the geographic service area we adopt in this proceeding should be based on MEAs or BEAs. In particular, we ask commenters to consider the advantages and disadvantages of adopting a licensing scheme based on either geographic service area.

23. With regard to MEA-based licensing, allowing 900 MHz licensees the use of frequencies for systems providing coverage across wider areas may serve to increase spectrum efficiency, provide better quality service to end users, and allow service to reach potential end users that may otherwise be without adequate communication options. MEA-based licensing might also grant the degree of flexibility, both geographically and operationally, necessary to construct wide-area systems. MEAs may also offer a balance between smaller, more numerous BEAs that could impede wider-area service, versus larger geographic areas that may result in a small number of licensees. Commenters should consider whether CMRS systems, including SMR services, are likely uses for the spectrum, and if so, whether MEAs are the most appropriate geographic area boundary here. Commenters should also discuss whether MEA-based licensing is more appropriate in light of the band reconfiguration taking place at 800 MHz, in terms of facilitating the ability to shift displaced CMRS operations from 800 MHz to 900 MHz.[33]

24. On the other hand, EAs, which are more than three times the number of delineated economic areas than MEAs, may facilitate the ability of incumbents and other small and medium-sized operators of smaller systems to participate in geographic area licensing. Adopting an EA-based licensing scheme may permit small bidders and rural companies wishing smaller license areas to obtain them directly at auction rather than facing the uncertainty and transaction costs of working out post-auction partitioning agreements. Commenters should consider what geographic area type best mirrors the geographic areas for the likely systems to operate on these channels. We also solicit comments regarding whether a larger number of licenses created under this approach would (1) deter some bidders due to perceived additional difficulty in aggregating licenses, or (2) result in a large number of unsold licenses

[29] MTAs are based on the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition. *Major Trading Areas delineated by the Rand McNally 1992 Commercial Atlas & Marketing Guide* 123rd Edition, at pp 38-39, extended and excepted by the Federal Communications Commission, 59 Fed. Reg. 14115 (March 25, 1994).

[30] *CMRS Third Report & Order*, 9 FCC Rcd at 8050-51 ¶ 113-15.

[31] MEAs, which were created by Commissions staff, are an aggregation of Basic Economic Areas (BEAs) into 52 regions, including the Gulf of Mexico. *Major Economic Areas delineated by the Federal Communications Commission*, 62 Fed. Reg. 9636 (March 3, 1997).

[32] EAs are based on the Economic Areas delineated by the Regional Economic Analysis Division, Bureau of Economic Analysis, U.S. Department of Commerce (February 1995) and, as used by the Commission, include 176 areas, including Guam and the Northern Mariana Islands, Puerto Rico and the U.S. Virgin Islands, American Samoa and the Gulf of Mexico. *Economic Areas delineated by the Regional Economic Analysis Division, Bureau of Economic Analysis, U.S. Department of Commerce* February 1995 and extended by the Federal Communications Commission, 62 FR 9636 (March 3, 1997).

[33] *800 MHz R&O*, 19 FCC Rcd at 15,127 ¶ 336.

(particularly in markets where an entire EA is encumbered).[34]

25. We also ask parties to detail what other alternative service area licensing boundaries are preferable and why. In discussing geographic license areas, commenters are requested to take into consideration whether a particular licensing area band plan serves the Commission's spectrum management goals, including flexible and efficient spectrum use.[35]

3. Channel Block Size

26. The 896-901/935-940 MHz band is currently comprised, in part, of twenty blocks of ten contiguous channels each allocated to 900 MHz SMR services.[36] These 900 MHz SMR channel blocks are interleaved with 199 channels allocated in 10-channel blocks assigned to B/ILT services.[37] We seek comment on our proposal to license the 900 MHz flexible-use channels in nineteen blocks of ten contiguous channels each, and one block of nine contiguous channels.[38] We also propose that each ten channel block should be separately licensed, and that applicants should be permitted to aggregate blocks if they wish.

27. When assessing the need to restrict the opportunity of any class of service provider to obtain spectrum for the provision of communications services, our overall goal has been to determine whether the restriction is necessary to ensure that consumers will receive communications services in a spectrum-efficient manner and at reasonable prices. Under our precedent, eligibility restrictions are imposed only when (1) there is a significant likelihood of substantial competitive harm in specific markets, and (2) eligibility restrictions will be effective in addressing such harm.[39] Under this standard, the Commission relies on market forces to guide license assignment absent a compelling showing that regulatory intervention to exclude potential participants is necessary.[40] Accordingly, in furtherance of competition, we will not restrict eligibility for any channel block. Rather, we believe it is appropriate to allow both incumbents and new entrants to bid for one or more 900 MHz channel blocks that will be licensed. Below is a visual representation of our proposed band plan:

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[34] We note that adopting a licensing schedule using EAs would result in a significantly greater number of licenses and may preclude the use of certain design options such as package bidding.

[35] *See* 47 U.S.C. §309(j)(3)(D).

[36] 47 C.F.R. § 90.617, Table 4B, SMR Category 896-901/935-940 MHz Band-Channels (200 channels).

[37] 47 C.F.R. § 90.617, Tables 2B, 3B.

[38] As noted earlier, the 900 MHz B/ILT Pools contain 199 channels, thus one channel block would include nine rather than ten channels.

[39] *See, e.g.*, Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, ET Docket No. 95-183, *Report and Order and Second Notice of Proposed Rule Making*, 12 FCC Rcd 18,600, 18,619-20 ¶¶ 32-35 (1997); Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, Hyperion Communications Long Haul, L.P., Application for Expedited Review, *Third Report and Order and Memorandum Opinion and Order*, 15 FCC Rcd 11,857, 11860-62 ¶¶ 6-12 (2000).

[40] *See, e.g.*, Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands; WT Docket Nos. 03-66, *Notice of Proposed Rule Making and Memorandum Opinion and Order*, 18 FCC Rcd 6722, 6773 ¶ 121 (2003).

28. We believe that the proposed configuration can provide operational flexibility and efficiency by allowing providers to use new technologies and compete effectively with other commercial providers. By using this configuration, the Commission also avoids the transaction costs associated with reaggregation of spectrum, while promoting the flexibility necessary to facilitate secondary market uses. In addition, licensing the spectrum in contiguous blocks promotes the viability of CMRS services, including SMR services, since it permits the flexible and efficient use of technologies over the contiguous spectrum. As a result, the proposed channel block size will accommodate displaced CMRS services from 800 MHz, should the need arise. We further believe that our proposed 900 MHz channel block plan strikes a balance in affording small, medium and large operators the opportunity to obtain sufficient spectrum to establish viable and competitive wide-area systems. Specifically, we believe it offers a middle ground between larger channel blocks that may block entry to new, smaller operators, and smaller block sizes that may hinder wide-area operations. Finally, we note that a configuration of ten-channel blocks is the maximum amount of contiguous spectrum attainable, given that the blocks (AA-TT) are interleaved with existing 900 MHz SMR licensees (A-T).

29. We ask commenters to address whether our proposal to license the 900 MHz flexible-use channels in nineteen blocks of ten contiguous channels each, and one block of nine contiguous channels is sufficient or excessive for likely spectrum uses. We request comment on whether our proposed allocation is a fair division of channels within the geographic area and will lead to efficient spectrum use. Commenters are particularly encouraged to address the appropriateness of alternative block sizes both smaller and larger than proposed. In this regard, we recognize that there are other possible alternatives that could prove feasible. Each option presents a trade-off between the benefits of providing each licensee a large number of channels, and the benefits of increased competition by having more licensees.

30. Although we believe that that our further proposal provides the best allotment of channels for likely uses, other options could prove viable. In particular, should we adopt an EA-based licensing approach, a more viable option might include nine blocks of twenty non-contiguous channels each and one block of nineteen non-contiguous channels. This band configuration would allow potential bidders to acquire a larger number of channels, albeit in smaller geographic areas. Other options to consider may be thirty-nine blocks of five contiguous channels and one block of four contiguous channels. Commenters might also consider the option of dedicating the upper four channel blocks (*i.e.*, QQ, RR, SS, TT) to traditional B/ILT services. We also ask commenters to consider whether we should permit potential bidders to bid on licenses comprising multiple band plans according to the band plan configuration they prefer and use the bidders' collective valuation of licenses consistent with each band plan in determining which band plan to implement. We seek comment on these and any other preferred channel allotment plan. Commenters should support their preferred channel allotment plan through a detailed description of their preferred plan and a thorough analysis of why their plan best serves the public interest. In particular, commenters should consider whether their proposal will lead to the development of technologically advanced systems, while maintaining sufficient competition through multiple licensees. We also ask commenters to address our proposal to permit licensees to aggregate blocks and to allow both incumbents and new entrants to bid on the spectrum. We seek comment on this proposal.

31. *Licensing in Mexican/Canadian Border Areas.* Frequencies available for use in the

U.S./Mexico and U.S./Canada border areas correspond to the 900 MHz B/ILT channels.[41] As such, we propose to use the same allocation of geographic licensed channel block sizes in border areas as in non-border areas. Notably, those frequencies with power flux density limitations are secondary in the U.S. to Mexico/Canada frequencies (*i.e.*, these frequencies are the neighboring country's primary frequencies). We also note that use of channels in geographic areas that encompass border areas are subject to the relevant rules regarding international assignments and coordination of such channels.[42] Accordingly, applicants will need to assess the impact of the border requirements in their valuation of those blocks for competitive bidding purposes. We ask commenters to discuss whether this approach is appropriate for these channels or whether some other channel assignment mechanism would better serve the public interest.

C. Rights and Obligations of Geographic Area Licensees

1. Operational Flexibility

32. We believe that a key element in any new licensing scheme is that licensees be extended flexibility in terms of the location, design, construction, and modification of their facilities throughout their service area. Accordingly, consistent with the flexibility granted to cellular, PCS and SMR licensees, we tentatively conclude that geographic area licensees in the 900 MHz band should be permitted to construct stations at any authorized site and on any available channel within their licensing area. We also propose to allow a geographic area licensee to expand or modify facilities throughout its service area without prior Commission approval, so long as the system continues to be in compliance with our technical and operational rules, protects incumbents, and is consistent with international requirements and approvals as noted above.

33. We believe that granting these flexible rights to the 900 MHz geographic area licensees will lessen administrative burden on both licensees and the Commission with respect to future management of the spectrum contained in the licensed area overlay blocks. We seek comment on this proposal and other alternatives, including the costs and benefits associated with each alternative in markets that are heavily occupied by incumbent licensees.

2. Treatment of Incumbent Systems

34. Given the number of systems already authorized in the 900 MHz B/ILT band, a critical issue associated with our geographic area licensing proposals is its impact on existing incumbent 900 MHz B/ILT licensees. We believe it appropriate to require geographic area licensees to afford the same protection to incumbent B/ILT systems as is provided to incumbents by existing 900 MHz SMR MTA licensees. Therefore, we propose to require geographic area licensees to afford protection to incumbent B/ILT systems either: (1) by locating their stations at least 113 km (70 miles) from any incumbent's facilities; (2) by complying with the co-channel separation standards of our "short-spacing" rule if they

[41] Specifically, in the 896-901/935-940 MHz band (900 MHz B/ILT), the same channels that are available for use in non-border areas in the B/ILT services (47 C.F.R. § 90.617, Tables 2B and 3B) are also available in the U.S./Mexico border area (47 C.F.R. § 90.619, Table 2B and 3B). Channels numbered above 200 may be used only subject to the power flux density limits stated in 47 C.F.R. § 90.619(a)(2). Similarly, the same channels available for use in non-border areas in the B/ILT services are also available in the U.S./Canada border area (47 C.F.R. § 619(d)(1) Table 27 and (d)(6) Table 28. The channels identified in Table 28 have power flux density limitations at the U.S./Canada border.

[42] Specifically, bidders should be aware that there may be special coordination or other limitations in certain border regions. *See generally* 47 C.F.R. §§ 90.619(a)-(d).

seek to operate stations located less than 113 km (70 miles) from an incumbent licensee's facilities; or (3) by negotiating an even shorter distance with the incumbent licensee.[43] We also seek comment on our tentative conclusion that the geographic area licensee's co-channel obligations cease upon the deletion of a revoked or terminated co-channel station authorization from the Commission's licensing records. The geographic area licensee would then be allowed to construct and operate base stations using such frequency, subject to the rules we have proposed.[44]

35. We believe this interference protection proposal will adequately protect incumbent operations without hindering the ability of geographic area licensees to construct stations throughout their authorized service area. We ask commenters to address whether applying these existing interference requirements to geographic area licensee protection of incumbents would hamper the geographic area licensee's ability to fully construct its system. We also ask commenters to consider whether additional interference protection requirements are necessary and if so, what additional rules should apply and why. In particular, we note that the architecture of incumbent systems within the band may be significantly different than new entrants and could lead to interference mechanisms, such as receiver overload or intermodulation, that may not be fully addressed by our interference protection proposal or co-channel spacing requirements. We note that licensees may be faced with the same interference problems that necessitated the remedies adopted in the *800 MHz R&O* unless equivalent interference abatement requirements are established at 900 MHz. In this regard, we specifically ask whether the overall approach to interference protection should be modified to include the interference abatement reached in the *800 MHz R&O*,[45] or an enhanced or voluntary Best Practices[46] approach to address potential interference in this band, or whether the appropriate interference avoidance mechanisms are best left to private arrangements and negotiations between licensees.

36. *Grandfathering provisions for incumbent licensees.* Consistent with the flexibility provided to incumbent 900 MHz SMR licensees, we propose to define the existing service area of an incumbent B/ILT system by its originally-licensed 40 dBμV/m field strength contour.[47] As our objective is to allow incumbents to continue existing operations without harmful interference and to give them flexibility to modify or augment their systems so long as they do not encroach on the geographic area licensee's operations, we propose to permit incumbent licensees to add or modify transmit sites[48] in their existing service area, without prior approval or without post construction notification to the Commission, so long as their original 40 dBμV/m signal is not expanded. We also propose to allow incumbent licensees operating at multiple sites to exchange multiple site licenses for a single license throughout the

[43] *See generally* 47 C.F.R. § 90.621(b).

[44] *See* Appendix A.

[45] *See 800 MHz R&O*, 19 FCC Rcd at 15,021-41 ¶¶ 88-132; *see also, e.g.*, Petition of the Association of American Railroads for Reconsideration, WT Docket No. 02-55 *et al.*, filed Dec. 17, 2004 (requesting the Commission to adopt interference abatement procedures for incumbents in the 900 MHz band equivalent to those adopted in the *800 MHz R&O*); Petition of the National Association of Manufacturers and MRFAC, Inc. (NAM/MRFAC) for Reconsideration, WT Docket No. 02-55 *et al.*, filed Dec. 22, 2004 (seeking adoption of Enhanced Best Practices and stringent interference protection for 900 MHz B/ILT incumbents against CMRS operations); Petition of Exelon Corporation for Reconsideration, WT Docket No. 02-55 *et al.*, filed Dec. 22, 2004 (urging the Commission to extend the interference abatement requirements of the *800 MHz R&O* to incumbent 900 MHz licensees).

[46] *See, e.g., 800 MHz R&O*, 19 FCC Rcd at 15,034-37 ¶¶ 115-123.

[47] *See* 47 C.F.R. § 90.667(a); *see also SMR Second R&O*, 10 FCC Rcd at 6901 ¶ 46.

[48] That is, incumbents are permitted to fill in "dead spots" in coverage or to reconfigure their systems to increase capacity within their service area.

contiguous and overlapping 40 dBμ/Vm field strength contours of the multiple sites. We would expect incumbents exercising this option to submit specific information for each of their external base sites after the close of the 900 MHz spectrum auction. We solicit comments on our approach in adopting these provisions for incumbent B/ILT systems.

37. *Option for incumbent licensees to transition through auction.* We also seek comment on whether to provide an option for incumbent licensees to return their licensees through an auction that includes the new geographic area overlay licenses for white space as well as any site-based licenses currently held by incumbent licensees who may be willing to exchange or sell their licenses.[49] In such an auction, interested parties would be able to bid on licenses covering both the site-based and overlay areas, thereby increasing their ability seamlessly to use more of the geographic area covered by the new license and eliminating the need to protect those incumbents who give up their licenses or to negotiate post-auction with incumbents that may wish to.

38. Participation by incumbent licensees would be voluntary. They could choose to continue their current operations under their site-based licenses; bid in the auction for additional overlay licenses; or return their current licenses in exchange for means to obtain comparable spectrum access. There are various methods by which this framework could be implemented, including an auction in which incumbents would exchange their licenses for tradable bidding offset credits, the value of which would be linked to the winning bids for licenses sold in the auction. Another option is to conduct an auction which permits incumbents to participate not only as potential buyers of overlay rights, but also as sellers of their existing site-based licenses, with the right to set a reserve price below which they would choose not to sell the licenses.

39. Because, in effect, both site-based and white-space rights would be available at the same time, bidders wishing to put together full area licenses would not be deterred from participating because of the uncertainty and transaction costs of dealing with incumbents post-auction; they would face those costs directly during the auction. In general under this type of auction mechanism, the assignment would be economically efficient; since bidders could place bids that reflected the full value of the combined existing and residual rights, the auction could assign the rights to the highest valuing bidders. In versions of this general form of auction discussed by the Commission, existing licensees would not be required to relinquish their rights, but they would be likely to do so if compensation for their license exceeded the value to them of continuing with their current use.[50]

40. Such a mechanism to promote the efficient transition of incumbent users may be most useful in situations in which the anticipated use of the spectrum under new service rules is incompatible with the

[49] A working paper published by the Commission discusses how auctions and exchanges can be used to transition rapidly from existing spectrum band plans and policies to new plans and more flexible policies. *See, generally,* Evan Kwerel and John Williams, 2002, "A Proposal for a Rapid Transition to Market Allocation of Spectrum" Office of Plans and Policy Working Paper No. 38, Federal Communications Commission ("*Spectrum Market Allocation Transition Paper*").

[50] *See generally, Spectrum Market Allocation Transition Paper.* Another variation on this general type of auction is discussed in the Further Notice of Proposed Rulemaking with respect to rules and policies governing the licensing of the Instructional Television Fixed Service (ITFS) and Multipoint Distribution Service (MDS). *See* Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *et seq.*; WT Docket No. 03-66, *et seq., Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14,165, 14,276 ¶ 303 (2004) (*BRS/EBS FNPRM*) (proposing to provide certain existing licensees with bidding offset credits).

continued existence of incumbents operating legacy systems in the band as, for example, in the BRS/EBS proceeding where the interleaved nature of the former MDS/ITFS band plan seriously compromises a move to higher valued uses of the spectrum. While we expect that the overlay licenses we make available in this proceeding will be useful for providing new services regardless of the existence of site-based B/ILT users, it may be the case that an auction option in which the licenses of incumbent providers are also made available would encourage a quicker and smoother transition of the 900 MHz spectrum to uses consistent with the more flexible service rules adopted here. We seek comment on such an option (an auction option in which the licenses of incumbent providers are also made available). To the extent that commenters propose auction mechanisms beyond the scope of prior Commission proposals, as in the *BRS/EBS FNPRM,* commenters should address the Commission's authority to employ such mechanisms..

3. Emission and Field Strength Limits

41. *Emission Limits.* As a protection against adjacent channel interference, the Commission has subjected most mobile radio services to emission mask rules that restrict transmitter emissions on the spectrum adjacent to the licensee's assigned channel. In the *CMRS Third R&O,* the Commission affirmed its out-of-band emission rules for CMRS services as applicable to "outer" channels in each block and to "interior" channels where there are incumbent licensees.[51] The Commission concluded that these channels have the potential to affect operations outside of the geographic licensee's authorized bandwidth and noted that its approach was consistent with similar rules imposed in the broadband PCS and 800 MHz SMR context.[52]

42. We propose similar rules for geographic area licensees in the 900 MHz band. Specifically, on any frequency in a geographic area licensee's spectrum block that is adjacent to a non-geographic area frequency, we propose that the power of any emission shall be attenuated below the transmitter power (P) by at least 43 plus 10 $\log_{10}$(P) decibels or 80 decibels, whichever is the lesser attenuation. We tentatively conclude that this emission mask would adequately protect licensees in neighboring spectrum. Nevertheless, we seek comment on any alternatives appropriate for any unique operational issues presented by geographic area-based CMRS systems, and ask commenters to include a technical analysis of each proposal.

43. *Field Strength Limits.* We also tentatively conclude that the predicted or measured field strength at any location on the border of the service area for geographic area licensees should not exceed 40 dBμV/m unless all bordering geographic area licensees agree to a higher field strength. We propose to require geographic area licensees to coordinate their frequency usage with all other affected parties. However, to the extent a single entity obtains licenses for adjacent geographic areas on the same channel block, we will not require such entities to coordinate their frequency usage, subject to co-channel protection requirements to incumbents. This requirement is similar to that imposed on cellular and PCS services, and is also consistent with the approach taken for 900 MHz SMR services.

44. We request comment on whether 40 dBμV/m is an appropriate field strength level for a geographic area licensee's operations at its service area border. Commenters should address whether this limit furthers our goal of avoiding harmful interference or whether stricter requirements are necessary. If alternative limits are proposed, we ask commenters to explain why stricter limits are required and to

[51] *CMRS Third R&O,* 9 FCC Rcd at 8067-68 ¶¶ 160-61. "Outer" channels are those on the outer edges of the geographic licensee's channel block while "interior" channels are those inside the geographic licensee's channel block assignment that are adjacent to other licensees. *Id.*

[52] *See SMR Second R&O,* 10 FCC Rcd at 6907 ¶¶ 60-61; *CMRS Third R&O,* 9 FCC Rcd at 8067-68 ¶¶ 160-61.

provide a technical analysis of any alternative proposal.

4. Performance Requirements

45. Section 309(j)(4)(B) of the Communications Act requires the Commission to include safeguards to protect the public interest in the use of spectrum, and "performance requirements . . . to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid development of new technologies and services."[53] In addition, we seek to promote the efficient and effective use of the spectrum.[54] In this regard, we tentatively propose that we should require 900 MHz licensees to submit to the Commission a showing of substantial service in their licensed area within ten years of being licensed. We believe this performance requirement could provide greater flexibility for parties interested in entering into spectrum leasing arrangements involving this spectrum, as well as for providing service to rural or sparsely populated areas. We note, however, that some commenters may prefer a more "accelerated" requirement, and we therefore solicit comment on whether to adopt a five-year substantial service performance requirement or other performance standard.

46. With regard to a ten-year substantial service requirement, we recognize that this is less stringent than the coverage standards imposed in both the narrowband and broadband PCS and 900 MHz SMR contexts.[55] Nevertheless, we believe that a showing of substantial service by the tenth year of license grant may be appropriate for 900 MHz flexible-use licensees, and may best accomplish the Commission's goals for this spectrum.

47. In the alternative, we seek comment from those that believe a five-year substantial service requirement would be more efficient for the 900 MHz flexible-use licenses. We ask those commenters to elaborate on how an accelerated performance requirement is the best option for potential licensees and consumers, while at the same time, fulfilling the Commission's goals of providing flexible use with innovative technologies. For example, we seek comment on our understanding that the market for 900 MHz equipment is relatively mature and robust and should not unnecessarily delay service deployment. We also seek comment on whether a five-year substantial service requirement may bring services more rapidly to the market or other reasons why a more accelerated requirement may be preferable.

48. We believe the flexibility offered through substantial service (as opposed to a population benchmark) would allow licensees to provide service to rural areas that may have a high service demand, as compared with heavily-populated urban areas with less demand. We note, though, that what constitutes "substantial service" may vary from market to market, depending on the levels of incumbency and other unique circumstances, and we ask parties to consider this in their comments. Of course, a substantial service requirement, whether at five or ten years, may not suit all licensees, and we seek comment on the applicability of the Commission's waiver process in addressing substantial service given the levels of incumbency in this band.

49. We note that in the *SMR Second R&O*, the Commission required 900 MHz SMR licensees to provide coverage to one-third of the population of their service area within three years of initial license grant and to two-thirds of the population of their service area within five years.

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[53] 47 U.S.C. § 309(j)(4)(B).

[54] 47 U.S.C. § 309(j)(3)(D).

[55] *See* 47 C.F.R. § 24.203(a) and (b); 47 C.F.R. §§ 90.665(b) and (c).

Alternatively, at the five year mark, SMR licensees may submit a showing to the Commission demonstrating that they are providing substantial service.[56] The Commission noted that including a showing of substantial service for 900 MHz MTA licensees was appropriate since several offerings in that band included specialized services or niche markets.[57]

50. In the interest of flexibility and regulatory symmetry within the 900 MHz band, and consistent with the questions above, we seek comment on whether we should modify existing coverage requirements for 900 MHz SMR services to mirror the proposed substantial service showing for those 900 MHz licensees permitted flexible spectrum use. We believe that flexible performance standards may enhance the rapid deployment of new technologies, expedite service to rural areas, and allow licensees to respond to market demands for service. Finally, we note that under this proposed rule, licensees that have met their construction requirements need take no further action; this rule would apply only to 900 MHz licensees that have not yet filed their construction notifications. We seek comment on this proposal.

51. We solicit comments on whether the above proposals strike a balance between ensuring that spectrum is used effectively and promptly, while providing an adequate deterrent to competitors that might seek to warehouse spectrum. If stricter standards are warranted, what should they be and why are they needed? We also request comments on the cost and benefits of imposing coverage requirements on these licensees and the specific coverage standard proposed. We also ask commenters to discuss how any alternative standards are consistent with the requirements of Section 309(j) of the Act that the spectrum is used efficiently and deployed rapidly.[58]

52. *Loading Requirements.* We note that the Commission previously eliminated loading requirements for future licensing of all CMRS providers.[59] The Commission has noted that loading requirements are not a reliable indicator of efficient channel usage and that spectrum warehousing concerns can be adequately addressed by other means, including performance requirements.[60] We note that incumbent B/ILT licensees are subject to loading requirements.[61] While we do not propose to adopt loading requirements for the 900 MHz licensees, we seek comment on whether we should retain or eliminate loading requirements as they apply to existing B/ILT authorizations. We question the usefulness of retaining loading requirements for B/ILT incumbents who are currently permitted to initiate CMRS operations without any holding periods on their currently authorized spectrum or to assign their authorizations to others for CMRS use. Given that B/ILT incumbents would now additionally have the ability to obtain a geographic area license, or to sell their current frequencies, we seek comment on the practicality of retaining loading requirements for incumbents.

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[56] *SMR Second R&O*, 10 FCC Rcd at 6898 ¶ 40.

[57] *SMR Second R&O*, 10 FCC Rcd at 6898 ¶ 41.

[58] 47 U.S.C. § 309(j)(3).

[59] *See CMRS R&O*, 9 FCC Rcd at 8081 ¶¶ 190-91. Loading rules require an applicant to demonstrate that it will "load" a channel with a certain number of mobiles in order to obtain exclusive use of that channel or to load a channel to full capacity before requesting additional spectrum.

[60] *CMRS R&O*, 9 FCC Rcd at 8081 ¶ 191 & n.351.

[61] *See e.g.*, 47 C.F.R. §§ 90.631, 90.633. Under Part 90, non-SMR trunked and conventional systems are authorized on the basis of a minimum loading criteria of one hundred or seventy (respectively) mobile stations for each channel authorized.

5. Other Operating and Technical Rules

53. *Other Part 90 Requirements.* The application of general provisions of Part 90[62] would include rules related to applications and authorizations, assignment, licensing and use of frequencies, general technical standards, including power and antenna height limits, types of emissions, frequency stability, and transmitter measurements, as well as general operating requirements.[63] We seek comment on applying these provisions to the spectrum that is the subject of this *Notice*. We propose that all of these technical and operating rules would apply to all 900 MHz flexible-use licensees in this band, including those who acquire their licenses through partitioning and disaggregation. We seek comment on this proposal.

54. *Other Rule Part Requirements.* As noted above, although licenses in the 896-901 and 935-940 MHz band may be issued pursuant to one rule part, licensees in this band may be required to comply with rules contained in other parts of the Commission's rules by virtue of the particular services they provide. For example:

- Applicants and licensees will be subject to the application filing procedures for the Universal Licensing system, set forth in Part 1 of our rules.[64]
- Licensees will be required to comply with the practices and procedures listed in Part 1 of our rules for, *inter alia*, license applications and adjudicatory proceedings.
- Licensees will be required to comply with the Commission's environmental provisions, including section 1.1307.[65]
- Licensees will be required to comply with the antenna structure provisions of Part 17 of our rules.
- Licensees will be required to comply with the CMRS provisions of Part 20 and the public (common carrier) mobile radio services of Part 22, to the extent applicable.[66]

55. We seek comment generally on any provision in existing service-specific rules that may require specific recognition or modification to comport with the supervening application of another rule part, as well as any additional provisions that may be necessary to fully describe the scope of covered services and technologies. We seek comment on applying these rules to the spectrum that is the subject of this *Notice* and specifically on any rules that would be affected by our proposal.

D. Competitive Bidding Procedures

56. If mutually-exclusive applications are filed for these 900 MHz channels, the Commission

[62] *See* section IV.A.2. *supra.*

[63] *See e.g.*, 47 C.F.R. Part 90, Subpart G (Applications and Authorizations), Subpart H (Policies Governing Assignment of Frequencies), Subpart I (General Technical Standards), Subpart N (Operating Requirements) and Subpart S (Regulations Governing Licensing and Use of Frequencies in the 806-824, 851-869, 896-901, and 935-40 MHz Bands).

[64] 47 C.F.R. Part 1, Subpart F.

[65] 47 C.F.R. § 1.1307.

[66] 47 C.F.R. Part 20, Part 22; *see also* 47 C.F.R. § 90.5 (setting forth various other applicable rule parts).

will be required to resolve such applications by competitive bidding pursuant to the requirements of 47 U.S.C. § 309(j).[67] Accordingly, in this *Notice*, we request comment on a number of issues relating to competitive bidding for these 900 MHz channels.

1. Incorporation by Reference of Part 1 Standardized Competitive Bidding Rules.

57. We propose to conduct the auction for these 900 MHz channel licenses in conformity with the general competitive bidding rules established in Part 1, Subpart Q of the Commission's Rules, and substantially consistent with the bidding procedures that have been employed in previous Commission auctions.[68] Specifically, we propose to employ the Part 1 rules governing designated entities, application and payment procedures, reporting requirements, collusion issues, and unjust enrichment.[69] Under this proposal, such rules would be subject to any modifications that the Commission may adopt in its Part 1 proceeding.[70] In addition, consistent with current practice, matters such as the appropriate competitive bidding design, as well as minimum opening bids and reserve prices, would be determined by the Bureau pursuant to its delegated authority.[71] We seek comment on this proposal. In particular, we request comment on whether any of our Part 1 competitive bidding rules would be inappropriate, or should be modified, for an auction of these 900 MHz channel licenses. In addition, we request comment on whether any of our Part 1 competitive bidding rules should be modified if we provide an option for incumbent licensees to transition through the auction process.

2. Provisions for Designated Entities.

58. In authorizing the Commission to use competitive bidding, Congress mandated that the Commission "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services."[72] In addition, section 309(j)(3)(B) of the Communications Act of 1934 requires that in

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[67] The Balanced Budget Act of 1997, Pub. L. No. 105-33, Title III, 111 Stat. 251 (1997), amended Section 309(j) to require the Commission to award mutually exclusive applications for initial licenses or permits using competitive bidding procedures, with very limited exceptions. These exceptions are licenses and construction permits for public safety radio services, digital television service licenses and permits given to existing terrestrial broadcast licensees to replace their analog television service licenses, and licenses and construction permits for noncommercial educational broadcast stations and public broadcast stations under 47 U.S.C. § 397(6). *See* 47 U.S.C. § 309(j)(1), (2).

[68] *See* 47 C.F.R. §§ 1.2101-1.2113.

[69] *See, e.g.*, Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Second Order on Reconsideration of the Third Report and Order, and Order on Reconsideration of the Fifth Report and Order*, 18 FCC Rcd 10180 (2003); *id., Eighth Report and Order*, 17 FCC Rcd 2962 (2002); *id., Seventh Report and Order*, 16 FCC Rcd 17546 (2001); *id., Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, 15 FCC Rcd 15293 (2000) (*Competitive Bidding Part 1 Fifth Report and Order*); *id., Part 1 Competitive Bidding Third Report and Order*, 13 FCC Rcd 374; *id., Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, 12 FCC Rcd 5686 (1997) ("*Part 1 Order*").

[70] *See id.*

[71] *See Part 1 Order*, 12 FCC Rcd at 5679 ¶ 16 (clarifying that pursuant to Section 0.131 of the Commission's Rules, 47 C.F.R. § 0.131, the Chief, Wireless Telecommunications Bureau, has delegated authority to implement all of the Commission's rules pertaining to auctions procedures).

[72] *See* 47 U.S.C. §§ 309(j)(4)(D). Such entities are collectively described as "designated entities." *See* 47 C.F.R. § 1.2110(a).

establishing eligibility criteria and bidding methodologies, the Commission must promote "economic opportunity and competition . . . by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women."[73] One of the principal means by which the Commission furthers these statutory goals is the award of bidding credits to small businesses.[74] The Commission defines eligibility requirements for small business bidding credits on a service-specific basis, taking into account the capital requirements and other characteristics of the particular service.[75]

59. In this *Notice*, we propose small business bidding credits to further these statutory goals. Specifically, we propose to establish appropriate small business thresholds by taking into account the capital requirements and other characteristics for these particular 900 MHz channel licenses.[76]

60. In the *SMR Seventh Report and Order*, the Commission adopted criteria for defining two groups of small business for purposes of determining bidding credit eligibility to promote and facilitate the participation of small businesses in the competitive bidding for licenses in the 900 MHz SMR service.[77] In that proceeding, the Commission defined a small business as an entity that, together with its affiliates, controlling interests and affiliates of controlling interests, has average gross revenues not exceeding $15 million for the preceding three years.[78] In the same proceeding, the Commission defined a very small business as an entity that, together with its affiliates, controlling interests and affiliates of controlling interests, has average gross revenues not exceeding $3 million for the preceding three years.[79]

61. For competitive bidding for these particular 900 MHz channel licenses, we propose to adopt the definitions of small businesses and very small businesses which the Commission adopted for the 900 MHz SMR service, and which were used in the most recent auction of 900 MHz SMR licenses,

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[73] 47 U.S.C. § 309(j)(3)(B).

[74] Bidding credits allow eligible designated entities to receive a payment discount for their winning bid in an auction. *See SMR Seventh Report and Order,* 11 FCC Rcd at 2702 ¶ 157.

[75] 47 C.F.R. § 1.2110(c)(1); *see also* Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 388 ¶18 (1997) (modified by *Erratum*, 13 FCC Rcd 4621 (Wireless Telecom. Bur. 1998)) (*Part 1 Competitive Bidding Third Report and Order*); *see also* Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Second Memorandum Opinion and Order*, 9 FCC Rcd 7245, 7269 ¶145 (1994) (*Competitive Bidding Second Memorandum Opinion and Order*).

[76] 47 C.F.R. § 1.2110(c)(1); *see Part 1 Competitive Bidding Third Report and Order,* 13 FCC Rcd at 388 ¶ 18; *see also* Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Second Memorandum Opinion and Order*, 9 FCC Rcd 7245, 7269 ¶ 145 (1994).

[77] Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89-553, *Second Order on Reconsideration and Seventh Report and Order*, 11 FCC Rcd 2639, 2702-07 ¶¶ 157-165 (1995) (*SMR Seventh Report and Order*).

[78] *SMR Seventh Report and Order*, 11 FCC Rcd at 2702-07 ¶¶ 157-165. *See* 47 C.F.R. § 90.814.

[79] *SMR Seventh Report and Order*, 11 FCC Rcd at 2702-07 ¶¶ 157-165. *See* 47 C.F.R. § 90.814. Section 1.2110(b) of the Commission's rules, 47 C.F.R. § 1.2110(b), describes affiliate and controlling interest relationships in the designated entity context generally. *See also Part 1 Competitive Bidding Fifth Report and Order,* 15 FCC Rcd at 15,323-25 ¶¶ 59-62 ("[A]pplication of the 'controlling interest' standard will ensure that only those entities truly meriting small business status qualify for our small business provisions").

Auction No. 55.[80] We tentatively conclude that the 900 MHz channel licenses may have capital requirements similar to the 900 MHz SMR service licenses recently auctioned. In addition, competitive bidding for these 900 MHz licenses may attract the same type of businesses who participated in Auction No. 55. Accordingly, we seek to adopt small business size standards that provide a variety of businesses with the same opportunity to participate in competitive bidding for the new 900 MHz channel licenses as was provided for other licenses in the 900 MHz SMR band. Specifically, we propose to define a small business as an entity with average annual gross revenues for the three preceding years not to exceed $15 million.[81] In addition, we propose to adopt a definition for a very small business as an entity with average annual gross revenues for the three preceding years not to exceed $3 million.[82] We also propose to provide small businesses with a bidding credit of 10 percent and very small businesses with a bidding credit of 15 percent. In the interest of regulatory symmetry, we propose the same level of bidding credits the Commission provides to designated entities that are winning bidders for 900 MHz SMR licenses.[83] We seek comment on the use of these size standards, and associated bidding credits, with particular focus on the appropriate definitions of small and very small businesses as they may relate to the size of the geographic area to be served and the spectrum allocated to each 900 MHz channel license.

62. In discussing these issues, we request commenters to address the expected capital requirements for services in these bands and other characteristics of 900 MHz channel operations. We invite commenters to use comparisons with other services for which the Commission previously established auction procedures as a basis for their comments regarding the appropriate small business size standards. To the extent commenters support a different bidding credit regime,[84] or believe that there are any distinctive characteristics for these particular 900 MHz channel operations that suggest we should not employ bidding credits in this instance, commenters should support their proposals with relevant information. For example, such comments should provide information on the types of system architecture that licensees are likely to deploy for these particular 900 MHz channels, the availability of equipment, market conditions, and other factors that may affect capital requirements for deploying services on these 900 MHz channels.[85]

63. We also seek comment on whether our proposed designated entity provisions, if applied to these 900 MHz channel licenses, would promote participation by businesses owned by minorities and by women, as well as participation by rural telephone companies. To the extent that commenters propose additional or substitute provisions to enhance participation by minority-owned or women-owned businesses, commenters should address how we should craft such provisions to meet the relevant standards of judicial review.[86]

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[80] Auction of 900 MHz Specialized Mobile Radio Service Licenses Scheduled for February 11, 2004, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auctions Procedures, *Public Notice*, 18 FCC Rcd 21,176, 21,188 (Wireless Telecom. Bur. 2003).

[81] *See* 47 C.F.R. §§ 90.810, 90.814(b)(2).

[82] *See* 47 C.F.R. §§ 90.810, 90.814(b)(1). We will coordinate these proposed small business size standards with the Small Business Administration.

[83] *See* 47 C.F.R. § 90.810. We note that neither section 90.810 nor section 90.814 use the term "very small business." Instead, these particular rules use the term "small business" to cover both a small business and a very small business.

[84] *See* 47 C.F.R. § 1.2110(f)(2) for the standardized bidding credit schedule.

[85] *See* 47 C.F.R. § 1.2110(c)(1) (provides factors used to determine appropriate bidding credit thresholds).

[86] *See United States v. Virginia*, 518 U.S. 515 (1996); *Adarand Constructors v. Pena*, 515 U.S. 200 (1995).

V. 900 MHZ BAND FREEZE MEMORANDUM OPINION AND ORDER

64. As previously noted, in September 2004 the Bureau issued a Public Notice freezing its acceptance of applications for new 900 MHz licenses until further notice.[87] The Bureau indicated that an exceptionally large number of applications for 900 MHz authorizations had been filed subsequent to the release of the *800 MHz R&O*. The Bureau noted its concern that additional such filings might compromise the ability to accommodate displaced systems while the 800 MHz band is reconfigured to abate unacceptable interference to Public Safety, Critical Infrastructure, and other "high site" 800 MHz systems.[88] The Bureau provided that applications for modification of existing facilities, assignment of license, or transfer of control of a licensee would continue to be accepted, subject to applicable rules regarding eligibility, loading, and other requirements.[89] In addition, applicants were advised that they may have recourse via the Commission's waiver provisions to request an exception to the freeze.[90]

65. In response to this Public Notice, several interested parties have filed letters, informal oppositions, and petitions for reconsideration of the Bureau's action.[91] Generally, all of the parties oppose the Bureau's course. UTC, for example, requests that the Bureau lift the freeze in the interest of critical infrastructure personnel that may be threatened with significant exposure to loss of communications.[92] ITA suggests that any legitimate concerns regarding warehousing spectrum could be addressed through correct application of our rules governing loading and eligibility.[93] Advanced Metering Data Systems notes that this action "impedes the use of the 900 MHz band for all PLMR licensees and directs the agency's focus away from protecting the rights of legitimate applicants."[94] Similarly, Small Business in Telecommunications asserts that the freeze "works as a prejudice against all other *legitimate* applicants and existing users" that might need additional 900 MHz spectrum.[95] Finally, the National Association of Manufacturers/MRFAC recommends that the Bureau require a showing of a

[87] *See Freeze Public Notice* at 18,277; *see also supra* section II., para. 9.

[88] *See Freeze Public Notice* at 18,278 (citing *800 MHz R&O*).

[89] *See Freeze Public Notice* at 18,278 n.7.

[90] *See Freeze Public Notice* at 18,278 n.7 (citing 47 C.F.R. § 1.925).

[91] *See* Informal Opposition of Verizon Wireless, File No. 00001845839, *et al.* (Verizon Informal Opposition) (filed Sept. 14, 2004) (We note that Verizon filed its opposition prior to the Commission issuing the *Freeze Public Notice*. Verizon is opposed to the Commission granting the now pending applications for 900 MHz private mobile radio service (PMRS) submitted by ACI 900, Inc., a subsidiary of Nextel Communications, Inc. *See* Verizon Informal Opposition at 1); Letter from Jill M. Lyon, Vice President & General Counsel, United Telecom Council, to Michael Wilhelm, FCC, WT Docket No. 02-55, DA 04-3013 (filed Sept. 23, 2004) ("UTC Sept. 23 Letter"); Industrial Telecommunications Assn., Inc. Petition for Reconsideration, WT Docket No. 02-55, DA 04-3013 (filed Sept. 24, 2004) (ITA Petition); Letter from Robert H. Schwaninger, Jr., Counsel for Advanced Metering Data Systems, L.L.C. to Michael Wilhelm, FCC, WT Docket No. 02-55, DA 04-3013 (filed Sept. 29, 2004) (AMDS Letter); Small Business in Telecommunications Petition for Reconsideration Expedited Treatment Requested, WT Docket No. 02-55, DA 04-3013 (filed Oct. 4, 2004) (SBT Petition); Letter from Marvin W. McKinley, President, Lawrence A. Fineran, Vice-President, Regulation and Competition, NAM/MRFAC, WT Docket No. 02-55 (filed Oct. 12, 2004) (NAM/MRFAC Letter).

[92] *See* UTC Sept. 23 Letter at 1.

[93] *See* ITA Petition at 1; specifically, ITA notes that the Commission should ensure that applications comply with both section 90.621(a)(iii) (number of trunked frequency pair authorizations for non-SMR stations) and section 90.631(a) (loading criteria for non-SMR trunked systems) of the Commission's rules. *See* ITA Petition at 3 n.7.

[94] *See* AMDS Letter at 2.

[95] *See* SBT Petition at 2. (Emphasis in original).

licensee's eligibility and proposed loading as a way of screening for legitimate applications.[96] All of the interested parties asked the Bureau to lift the freeze on new applications for 900 MHz B/ILT licenses, or, in the case of Verizon Wireless, requests the Bureau to dismiss the pending PMRS applications submitted by ACI 900, Inc.

66. We recognize that the freeze may prevent otherwise eligible business entities from applying for new 900 MHz B/ILT licenses, and we are mindful that some of the applications that would have been accepted (absent the freeze) may be for legitimate and eligible business purposes. However, because of the fundamental changes we are proposing in the service areas and channel blocks for future licensees in this service, we find it appropriate and necessary to suspend new 900 MHz applications in the B/ILT category Pools. We believe that allowing applications for new 900 MHz licenses might limit the effectiveness of the decisions ultimately made in the context of this proceeding. Moreover, our action is consistent with the Commission's past practices.[97]

67. Accordingly, to preserve the potential of realizing the goals and policies underlying this proceeding, we affirm the Bureau's decision to suspend the acceptance of applications for new 900 MHz licenses as of the release date of the *Freeze Public Notice*. Being cognizant of the needs of existing licensees, we note that incumbents may continue to file modification applications, and we will consider requests for waiver of the application freeze for new authorizations (*e.g.*, a licensee with a legitimate business need to expand coverage or add channels).[98] We believe this strikes an appropriate balance of our need to keep the spectrum as unencumbered as possible, with the needs of current licensees with business plans that need to be effectuated. We stress that the waiver applicant bears the burden of demonstrating compliance with waiver standards. We also note that all 900 MHz band applications for new licenses which were filed prior to the freeze and are still pending will be processed in the normal course. We emphasize, however, that each pending application will be subject to strict scrutiny, especially with respect to eligibility and channel loading requirements, and defective applications will be dismissed.

68. Accordingly, we deny the Petitions for Reconsideration filed by the ITA and SBT, and deny the informal requests for Commission action filed UTC, AMDS, and NAM/MRFAC to the extent they request a lift of the freeze on new 900 MHz applications. We also defer action on the Informal Opposition of Verizon Wireless as its request for relief may be mooted by the outcome of this *Notice*.

VI. PROCEDURAL MATTERS

A. *Ex Parte* Rules – Permit-But-Disclose

69. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules.[99]

B. Comment Period and Procedures

70. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the

[96] *See* NAM/MRFAC Letter at 2.

[97] *See, e.g., CMRS Third R&O,* 9 FCC Rcd at 8047-48 ¶ 108.

[98] *See Freeze Public Notice* at 2 n.7.

[99] *See generally* 47 C.F.R. §§ 1.1202, 1.1203, 1.1206.

Commission's rules,[100] interested parties may file comments on this *Notice* on or before **[30 days after publication in the Federal Register]**, and reply comments on or before **[45 days after publication in the Federal Register]**. Comments and reply comments should be filed in WT Docket No. 05-62, and may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.[101] All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

71. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by e-mail via the Internet. To obtain filing instructions for e-mail comments, commenters should send an e-mail to <ecfs@fcc.gov>, and should include the following words in the body of the message: "get form <your e-mail address>." A sample form and directions will be sent in reply.

72. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

73. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be attached to the original paper filing submitted to the Office of the Secretary. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Microsoft ™ Word 97 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy – Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters should send diskette copies to the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, 202-863-2893.

74. The public may view the documents filed in this proceeding during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street, S.W., Room CY-A257, Washington, D. C. 20554, and on the Commission's Internet Home Page: <http://www.fcc.gov>. Copies of comments and reply comments are also available through the Commission's duplicating contractor: Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, (202) 863-2893. Accessible formats (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the

[100] *See* 47 C.F.R. §§ 1.415, 1.419.

[101] Electronic Filing of Documents in Rulemaking Proceedings, *Report and Order*, 13 FCC Rcd 11322 (1998).